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**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2017-090-000913
THREE STRIKES WARNING
[2018] NZDC 4612**

THE QUEEN

v

TAYLOR JOHN HAURAKI

Hearing: 12 March 2018
Appearances: F Culliney for the Crown
N Wintour for the Defendant
Judgment: 12 March 2018

NOTES OF JUDGE D J SHARP ON SENTENCING

[1] Mr Hauraki, you are for sentence today after pleading guilty to three charges; one of sexual violation by rape, one of sexual violation by unlawful sexual connection and one of burglary. As I explained to you when I gave you the sentencing indication that I did, the burglary does not mean that you are burglar in the sense of going to steal. It is simply an acknowledgement of entering the property with an unlawful purpose. That unlawful purpose is shown in the other two charges

[2] I have to give you, and I give you now, a warning under the Three Strikes legislation. Everybody who is convicted of charges such as the ones that you face receives this warning which I have to give and you will get written notice of this warning as well.

[3] Given your convictions for sexual violation by rape and unlawful sexual connection, you are now subject to the Three Strikes Law. I am going to give you a warning of the consequence of another serious violence conviction. You will also be given a written notice outlining these consequences which lists what serious violent offences are.

[4] If you are convicted of any serious violent offences other than murder committed after this warning and if a Judge imposes a sentence of imprisonment, then you would serve that sentence without parole or early release. If you are convicted of murder committed after this warning, you must be sentenced to life imprisonment, that will be served without parole unless it is manifestly unjust. In that event, the Judge must sentence you to a minimum term of imprisonment. I have to give that warning, it is part of the process of sentencing.

[5] These sentencing notes should be read alongside the sentencing indication which I gave on 19 December 2017, which you accepted. In that indication, I considered the starting point that was required. I took into account the fact that you had no previous convictions, had served in the New Zealand Army and had strong family support. The starting point that I reached was an eight year starting point for imprisonment.

[6] I left open discounts for remorse and rehabilitation and I indicated that I would allow the full 25 percent which is allowed to all people who plead guilty to charges. The purpose of the 25 percent reduction in the starting point is this. In this case, although I have heard in the victim impact statement that the trial weighed heavily on the complainant and the possibility of having to come to Court meant serious impacts on her life after the impact of the offending itself which is most regrettable, but she did not have to give evidence at a trial which is something which is difficult for people and which is part of the reason that the discount is provided.

[7] Also, people who plead guilty are accepting responsibility that acceptance of responsibility is supported by the Courts and it is an indication of remorse for something which has been done wrong. Those are principles of sentence that are very important and I gave that indication that I would provide that discount and I say those

things now so that it is understood what the basis which underlines the discount for a guilty plea is.

[8] I have read the Provision of Advice to Courts Report that has been provided for you and I have read the transcript of the restorative justice meeting. In addition to that, today I have heard the victim impact statement which was read. Something which comes through that is that the victim of these offences is somebody who has had terrible things happen to her for no reason on her part and who has had to explain things to family members with great difficulty and pain. The victim is to be acknowledged for her willingness to attend restorative justice and for her fair explanation of her understandable emotional trauma and the problems your offending has caused her.

[9] Those things are clear to anybody that looks from the outside but I have heard them particularly expressed in a way that is consistent with somebody who was willing to meet with you at the restorative justice conference. That conference as reported was a detailed exchange between yourself, your supporters and the victim and her supporters.

[10] The Provision of Advice to Courts Report and the victim impact statements created difficulty for me. The difficulty is this; people who are remorseful, and I have seen your notes today in which you say that you are sorry and wish that you could put the clock back. You also apologise to the victim for what happened, but you still have aspects of this that relate to a lack of memory of events.

[11] Your view is that someone spiked your drink and you did not know what was happening and that this whole event is the product of someone else's act. I cannot give any credit for that. I cannot give credit for that for two reasons; firstly, the voluntary consumption of alcohol is not a basis to reduce anyone's sentence.

[12] Secondly, the guilty pleas which I must act on are the pleas of someone who knowingly did the acts that constitute the offences, this means I have to set aside from any view that this was in some way involuntary. The only course for someone who acted involuntarily was to take the matter to the trial. The realistic approach taken I

can understand, but I am limited in the credit I can give. I cannot look past your guilty pleas.

[13] I have to give you credit, the law requires it, for prospects of rehabilitation. Everything you do about alcohol problems is to your favour and will stand you in stead. It will be something which will be considered by the Parole Board. One of the facets of this sentencing is the Parole Board will read these sentencing notes and they will be faced with the same problem that I was faced with; you have to be sentenced on the basis that you knew what you were doing. You are still saying you did not do anything wrong because somebody else put you in that state. That is difficult as far as rehabilitation is concerned.

[14] What you can do is to do something about your alcohol problem, everything you do while you are in custody to address that problem and those issues will be something the Parole Board will take into account. But you cannot do courses that are offered to people who have offended in a sexual [manner] when you say that you did nothing with the intention to cause this pain to the victim of your offending.

[15] I cannot give the credit for rehabilitation that I might otherwise have done. There are factors that I do have to take into account on your behalf. They are the fact that you have a strong, supportive pro-social family who stand beside you, as does your partner. You served in the New Zealand Army. You have no previous convictions. Those facts go to credit to you.

[16] That said, I have to deal with you in the circumstances as they stand. I am prepared to provide credit in relation to the mitigating factors that I have mentioned. That means that I would reduce the eight year starting point down to one of seven and a half years. From that, I will allow the 25 percent discount for your guilty plea which I said that I would allow. That brings a sentence of five years and seven months' imprisonment. That is on the sexual violation by rape charge.

[17] There will be a sentence of the same time of two years and six months in relation to the sexual violation by unlawful sexual connection and there will be a

sentence of three years' imprisonment with regard to the burglary. That is all served at one time. The total effective sentence is five years and seven months' imprisonment.

[18] That is all, thank you.

D J Sharp
District Court Judge